

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**No. 14-cr-03259 WJ
16-cv-00564 WJ/SMV**

NATALI ARVILLA CASTRO,

Defendant.

ORDER TO ANSWER

THIS MATTER is before the Court sua sponte under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts on Defendant Natali Arvilla Castro's Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. [CV Doc. 5; CR Doc. 41]. For the reasons explained below, the Court will order the United States of America to answer Defendant's amended § 2255 motion.

Defendant pleaded guilty pursuant to a plea agreement to the crime of conspiracy to possess with intent to distribute a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(b)(1)(C). [CR Docs. 32, 35, 36]. Defendant was sentenced to 45 months of imprisonment in the custody of the Bureau of Prisons, followed by three years of supervised release. [CR Doc. 36]. The Court rendered judgment on Defendant's conviction and sentence on July 31, 2015. *Id.* Defendant did not file a notice of appeal.

On June 10, 2016, Defendant filed a Request for Permission to File a Successive § 2255 Pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Welch v. United States*,

No. 15-6418, S. Ct. April 18, 2016. [CV Doc. 1; CR Doc. 39]. In her motion, Defendant contended that her sentence was enhanced under the career offender provision of the United States Sentencing Guidelines § 4B1.2, and she requested permission to file a second or successive motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 in light of the United States Supreme Court's recent decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016). [CV Doc. 1; CR Doc. 39].

The Court informed Defendant that, because this was her first § 2255 motion, she did not need permission from the Tenth Circuit to file a second or successive § 2255 motion. [CV Doc. 3; CR Doc. 40]. The Court further informed Defendant that it intended to re-characterize the motion as a first § 2255 motion and afforded Defendant an opportunity to withdraw the motion or to amend it to add additional claims. *Id.*; see *Castro v. United States*, 540 U.S. 375, 383 (2003).

In response, Defendant filed the present amended § 2255 motion. [CV Doc. 5; CR Doc. 41]. Defendant's amended § 2255 motion does not seek sentencing relief under *Johnson* and *Welch*; instead, it raises a single claim of "incomp[e]t[e]ncy." *Id.* at 5. Specifically, Defendant contends in her amended § 2255 motion that she was "under the abuse of alcohol" and "not on [her] right state of mind" on the night the crime was committed and, therefore, her conviction should be vacated. *Id.*

An amended pleading supersedes the original pleading and renders the original pleading of "no legal effect." *Franklin v. Kan. Dep't of Corr.*, 160 F. App'x 730, 734 (10th Cir. 2005); see also *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990) (a "pleading that has been

amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified”) (internal quotation marks and citation omitted). Therefore, the Court concludes that Defendant’s amended § 2255 motion supersedes her original § 2255 motion and that her request for sentencing relief under *Johnson* and *Welch* has been abandoned.¹

Having reviewed Defendant’s amended § 2255 motion under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court will direct the United States to file an answer.

IT IS THEREFORE ORDERED that the Clerk is directed to forward to the United States of America a copy of Defendant’s Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [CV Doc. 5; CR Doc. 41] and supporting papers and exhibits, if any, together with a copy of this Order.

IT IS FURTHER ORDERED that, within 23 days of entry of this Order, the United States answer Defendant’s amended § 2255 motion.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge

¹ The Court notes that Defendant was sentenced *after* the issuance of the decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and that Defendant’s sentence was not enhanced for a “crime of violence” under the United States Sentencing Guidelines.